

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE: . Case No. 22-90273
COMPUTE NORTH HOLDINGS INC. . Chapter 11
and CN MINING, LLC, . 515 Rusk Street
Debtors. . Houston, TX 77002
. Friday, December 16, 2022
. 1:30 p.m.

TRANSCRIPT OF MOTION FOR RELIEF FROM STAY TO RECOVER EQUIPMENT,
TERMINATE CONTRACT AND FOR OTHER RELIEF [506];
DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER
(I) CONDITIONALLY APPROVING THE ADEQUACY OF THE DISCLOSURE
STATEMENT, (II) APPROVING THE SOLICITATION AND NOTICE
PROCEDURES WITH RESPECT TO CONFIRMATION OF THE DEBTORS' JOINT
CHAPTER 11 PLAN, (III) APPROVING THE FORMS OF BALLOTS AND
NOTICES IN CONNECTION THEREWITH, (IV) SCHEDULING CERTAIN DATES
WITH RESPECT THERETO, AND (V) GRANTING RELATED RELIEF [578]
BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES CONTINUED.

Audio Operator: Courtroom ECRO Personnel

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Fishers, IN 46048
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APPEARANCES (Continued):

For the Debtors:	Paul Hastings LLP By: JAMES T. GROGAN, III, ESQ. 600 Travis Street, 58th Floor Houston, Texas 77002 (713) 860-7300
	Paul Hastings LLP By: MATTHEW MICHELI, ESQ. 71 South Wacker Drive, Suite 4500 Chicago, IL 60606 (312) 499-6000
For the Official Committee of Unsecured Creditors:	McDermott Will & Emery LLP By: CHARLES GIBBS, ESQ. 2501 North Harwood Street, Suite 1900 Dallas, TX 75201-1664 (214) 295-8000
	McDermott Will & Emery LLP By: KRISTIN GOING, ESQ. One Vanderbilt Avenue New York, NY 10017 (212) 547-5429
For Generate Lending, LLC:	Kirkland & Ellis LLP By: ELIZABETH JONES, ESQ. CHRISTOPHER MARCUS, ESQ. 601 Lexington Avenue New York, New York 10022 (212) 756-2000
For Marathon Digital Holdings:	Weil, Gotshal & Manges LLP By: ALEXANDER COHEN, ESQ. JESSICA LIOU, ESQ. 767 Fifth Avenue New York, NY 10153 (212) 310-8020
For the United States Trustee:	Office of United States Trustee By: JAYSON RUFF, ESQ. 515 Rusk Street, Suite 3516 Houston, TX 77003 (713) 718-4650



APPEARANCES (Continued):

For MP2 Energy Texas
LLC d/b/a Shell Energy

Cokinos Young
By: MARIA BARTLETT, ESQ.
Four Houston Center
1221 Lamar, 16th Floor
Houston, TX 77010
(713) 535-5524

For US Digital Mining
Texas:

Stichter Riedel Blain & Postler,
P.A.
By: SCOTT A. STICHTER, ESQ.
110 E. Madison Street, Suite 200
Tampa, FL 33602
(813) 229-0144

For RK Mission
Critical LLC:

Berg Hill Greenleaf & Ruscitti LLP
By: PATRICK M. HAINES, ESQ.
1712 Pearl Street
Boulder, CO 80302
(303) 402-1600

1



1 (Proceedings commence at 1:30 p.m.)

2 THE COURT: Good afternoon. Please have a seat.

3 All right. On the 1:30 docket, we're here on the Compute North
4 Holdings case, 22-90273. Electronic appearances have been
5 made. Let's go ahead with the hearing.

6 Mr. Grogan.

7 MR. GROGAN: Good afternoon, Your Honor. James
8 Grogan here from Paul Hastings on behalf of Compute North and
9 the other debtors in the case.

10 THE COURT: All right. Go ahead. Electronic
11 appearances have been made, Mr. Grogan. Let's move ahead with
12 the hearing.

13 MR. GROGAN: I'm sorry. What? I was going to --

14 THE COURT: Just go ahead because we've got
15 electronic appearances, so --

16 MR. GROGAN: Oh, okay. Fantastic. Thank you,
17 Your Honor. So, Your Honor, we're here today on conditional
18 approval. Well, actually, I -- you know, I think as a matter
19 of just efficiency, why don't we do -- we had an agreed order
20 on US Digital's motion for relief from stay. I think
21 Mr. Micheli was going to handle that. And then I can move,
22 once he's done presenting that agreed order --

23 THE COURT: All right.

24 MR. GROGAN: -- if I could move to the solicitation
25 procedures motion, which, you know, we're here just on



1 conditional approval of the disclosure statement.

2 THE COURT: Thank you.

3 Mr. Micheli, good afternoon.

4 MR. MICHELI: Good afternoon, Your Honor. Matt
5 Micheli, Paul Hastings, on behalf of the debtors. Actually,
6 Your Honor, this is a motion that was filed by US Digital for
7 relief from stay. The parties, after initially continuing the
8 objection deadline to work towards a resolution, ultimately the
9 debtors filed an objection. And then, in the time between
10 filing the objection and today, Your Honor, we have actually
11 managed to resolve all issues.

12 This morning, we filed a proposed form of order at
13 Docket Number 669, which is agreed to between US Digital's
14 counsel and the debtors. We also have received signoff from
15 the Committee with respect to that order. Your Honor, with
16 that, we would ask it be approved, but I'll turn it over to
17 Mr. Stichter, who originally had filed the motion on this
18 matter.

19 THE COURT: All right. Mr. Stichter, good afternoon.
20 Could I get you to press "five star" one time on your phone,
21 please. I've got you. Let me just get it activated. Good
22 afternoon.

23 MR. STICHTER: Good afternoon, Your Honor. This is
24 Scott Stichter, appearing on behalf of US Digital. We filed
25 our motion to seek relief from the stay to recover our mining



1 equipment. The equipment is actually now located at the
2 Wolf Hollow facility, although the contract was not assigned to
3 the Wolf Hollow facility. So we have an agreed form of order
4 that provides for the modification of the stay to retrieve our
5 equipment, rejection of the contract, a deadline to file
6 rejection damages; and then again, since it is at the Wolf
7 Hollow facility, it is subject to the rights of the owner of
8 the Wolf Hollow facility with respect to our ability to recover
9 the equipment.

10 THE COURT: All right. The proposed order looks
11 consistent with the type of relief that people were on fair
12 notice was being sought. Accordingly, we can take it up today
13 without further notice.

14 Is there any party that objects to entry of the order
15 that was filed at 36 -- excuse me -- 669?

16 (No audible response)

17 THE COURT: All right. I'm going to sign the agreed
18 order. This is fairly noticed out, no objections other than
19 from the debtor. That's been resolved. It will be docketed
20 this afternoon.

21 Mr. Laws, I'm going to send it to the work group.

22 All right. Where do y'all want to go next?

23 MR. GROGAN: Thank you, Your Honor. James Grogan
24 again for the debtors. Your Honor, the next item on the agenda
25 is the debtors' solicitation motion. This motion was filed at



1 Docket Number 578 on November 23rd. We have received one
2 objection to it as of yesterday from the Committee.

3 Before I get into the nuts and bolts of the Committee
4 objection, let me just give the Court a quick overview of what
5 we've done and there are some changes that we've implemented in
6 an effort to make the entire proposal more palatable, to the
7 Committee in particular, but also to address concerns raised by
8 the U.S. Trustee informally, as well as Generate.

9 So, Your Honor, as you're aware, the case since we
10 commenced it has been focused largely on asset sales. We have
11 successfully closed several separate sales throughout the case.
12 We've raised from those sales proceeds of approximately
13 \$15 million at this point. This is a remarkable result for
14 this case, where we were literally on the verge of cash zero
15 when we filed the case, with a projected administrative
16 insolvency date at the beginning of November.

17 At this point, based on our current projections,
18 under our liquidation analysis, we believe that we will have
19 approximately 18- or \$19 million net of all administrative
20 expenses and priority claims and secured claims to pay out to
21 the unsecured creditors.

22 This is a meaningful recovery. Really, I mean, the
23 percentage recovery is going to depend largely on how
24 successful we are in addressing some claims. I will note that,
25 once the bar date passed, the claims amount was about



1 466 million. In our view, that is grossly inflated, product of
2 a lot of duplicate claims, some large claims filed by
3 recipients of stock awards and things like that, that we think
4 would be procedurally disallowable.

5 I think once you get rid of what I'll call the
6 "low-hanging fruit," we should be down to somewhere in the
7 vicinity of 135 million in claims. At that point, we will, you
8 know, have to do a little more homework and start reconciling
9 invoices and things like that to start driving the number even
10 further down.

11 Our scheduled claims, just for reference, were about
12 27 million. So, you know, the realistic delta here is
13 somewhere between 135 and 27, depending on how you account for
14 different items.

15 But, in any event, you know, we're looking at a
16 minimum we think just below 10 percent recovery. And if we're
17 successful in bringing the claims down, it could be as high as
18 64 percent recovery to the unsecured creditors.

19 Your Honor, the plan also structurally is just
20 presented as a global peace accord. We're offering releases to
21 all of the creditors who are willing to give a release. So
22 this is a -- it's a plan premised on mutual releases. I know
23 the Committee takes issue with that. They basically want to
24 strip all the releases out, preserve all preference actions,
25 all fraudulent transfer actions, et cetera, against, you know,



1 all stakeholders.

2 We disagree with that. I mean, we can -- you know, I
3 view that as a confirmation issue, ultimately, but --

4 THE COURT: I think it's a confirmation issue as to
5 whether that should be approved, but I think it's a disclosure
6 statement issue as to whether you have disclosed the claims
7 that you're going to be releasing. Have you done that?

8 MR. GROGAN: Well, I think we have. I mean, if you
9 look at the disclosure statement --

10 THE COURT: Where? Where?

11 MR. GROGAN: -- there are six pages of disclosures in
12 there.

13 THE COURT: Yeah, but none of them say what your
14 claims are against the people you're releasing. You said read
15 this page, this page, and I read them all.

16 MR. GROGAN: Yeah.

17 THE COURT: None of them say here are the claims we
18 have, we're going to release those, and here's why. The only
19 thing you say about "here's why" is you want peace in the
20 world. But I think that -- I wouldn't vote for peace in the
21 world until I knew what war meant, right? I mean, if war means
22 that you're going to double the collections, then we should say
23 that. I don't see where that analysis is undertaken.

24 MR. GROGAN: So, you know, Your Honor, I am planning
25 to submit extensive evidence on that.



1 THE COURT: It has to be in the DS.

2 MR. GROGAN: I'm sorry. What?

3 THE COURT: Has to be in the disclosure statement.

4 That's what the disclosure statement is about. People need to
5 know whether to vote for the plan or not.

6 MR. GROGAN: Well --

7 THE COURT: How do I know whether to vote for it if I
8 don't know the value of the claims that you have?

9 MR. GROGAN: The value -- well, the value of the
10 claims, I mean, we're proposing to --

11 THE COURT: Under your plan, the value is zero
12 because you're --

13 MR. GROGAN: Yeah.

14 THE COURT: -- releasing them all.

15 MR. GROGAN: Yeah.

16 THE COURT: But are you releasing a \$20 million
17 preference claim? I mean, I don't know what you're releasing,
18 and a voter should have the right to know what it is that
19 you're releasing to see --

20 MR. GROGAN: Well --

21 THE COURT: -- if they agree with your view that
22 peace is better than non-peace.

23 MR. GROGAN: Your Honor, I mean, there are retained
24 causes of action. So what we were planning to do, and this
25 will be filed before the voting deadline, is prepare -- we will



1 have a list of retained causes of action, a schedule that goes
2 into the plan supplement, that will identify the causes of
3 action that we believe are valuable and worth pursuing.

4 THE COURT: You need to identify the ones you're
5 releasing and --

6 MR. GROGAN: Well, the ones we're releasing, I would
7 submit, are the ones that aren't worth pursuing.

8 THE COURT: Well, then, you need to identify them and
9 say why they're not worth pursuing. I don't see where that's
10 done.

11 The concern I've got is the way traditional approval
12 works is, if I get down to the final hearing and your
13 disclosure wasn't adequate, I have to deny confirmation, right?
14 This isn't a minor matter if we do a conditional approval and
15 mess it up.

16 MR. GROGAN: Yeah.

17 THE COURT: So I'm sympathetic to the fact that he
18 filed his objection late. He may have a reason why he didn't,
19 but not even getting into that. But -- I don't care how late
20 it is. You don't want to go to confirmation where somebody
21 could argue that the disclosure wasn't adequate.

22 I've also got to tell you that yesterday in the Talen
23 case -- I don't know if you heard what was going on in Talen.

24 MR. GROGAN: I did. I heard about the -- on
25 exculpation?



1 THE COURT: Yeah. I think that should work here, as
2 well.

3 MR. GROGAN: I was planning on using a similar
4 approach actually, at least in the confirmation order. But as
5 far as -- we actually did get comments from the U.S. Trustee's
6 Office, which we adopted. So I have added a self-limiting
7 element here, which --

8 THE COURT: I really don't like that. Look, the
9 Fifth Circuit has now told us what the limits are.

10 MR. GROGAN: Yeah.

11 THE COURT: And to say, okay, we're going to give it
12 to all these people; but, by the way, 14 of them don't count
13 because we're only doing this to the maximum extent permitted
14 by law. Let's say what we're doing, so that people can read it
15 and tell.

16 And I can give you another hearing quickly, once you
17 tell me these two -- I think those are the only two issues that
18 I'm going to raise. If you'll tell me when you want to come
19 back, we can come back next week and get this done.

20 MR. GROGAN: Okay. Yeah, could you give me over the
21 weekend to add additional disclosure on the --

22 THE COURT: Absolutely.

23 MR. GROGAN: And then we'll come back on Tuesday, if
24 that works?

25 THE COURT: I'll look at Tuesday, but that probably



1 works.

2 Mr. Gibbs, you can tell I've read your objection, but
3 do you have any problem with allowing him to explain what he's
4 releasing and then fixing the exculpation? I'm not sure if
5 you're aware of what we did in Talen or not.

6 MR. GIBBS: (Indiscernible) and we had a concern
7 about the proposed fix to the -- that we considered
8 unconfirmable --

9 THE COURT: Why don't you come on up, because I'm
10 having trouble hearing you.

11 MR. GIBBS: Sorry. I don't know if by responding to
12 your question you're wanting me to dispose or dispense with
13 anything else we wanted to raise to the Court, but I have no
14 problem with giving --

15 THE COURT: No. You can. But I want to know
16 whether, as to those two matters, does that cause you any
17 heartburn to let him identify what he's releasing and then not
18 have the broad exculpation but to include an 1125 provision?

19 MR. GIBBS: I have no problem with giving him the
20 opportunity to try to fix what you've recognized, as did we, as
21 critical infirmities in their motion and their proposed
22 disclosure statement.

23 THE COURT: What else do you have problems with?

24 MR. GIBBS: It's principally that, but I also need
25 to, I think, respond to a couple things. One, they -- and



1 Your Honor picked up on one. They filed a response to our
2 objection a few minutes ago and indicated that they believed
3 our objection was untimely, and quoted to a local rule with
4 respect to responses to requests for conditional approval of
5 disclosure statements.

6 Your Honor, the motion that we're here on is an
7 emergency motion filed by the debtor. And the first page of
8 that pleading says that any party objecting to the relief needs
9 to file a response prior to the commencement of the hearing.
10 So we followed exactly what they said in the first page of
11 their pleading. We don't believe our objection is untimely at
12 all, procedurally.

13 THE COURT: Fair enough.

14 MR. GIBBS: The other thing that, frankly, I don't
15 need to raise to the Court, because it's, I think, it's
16 offensive. In their response, they basically tainted all the
17 Committee members, or at least three of them, and by inference
18 the professionals advising the Committee.

19 The Committee took the position upon recommendation
20 of their counsel to oppose the conditional approval of the
21 disclosure statement. And I just want to remind the Court as
22 to what's happened in this case. We were here on every single
23 sales motion. We supported every single sales motion, all done
24 on expedited basis, and I think the Court commented and
25 commended us on more than one occasion --



1 THE COURT: That's correct.

2 MR. GIBBS: -- for taking a commercial approach in
3 this case. We have never opposed anything that the debtor has
4 done.

5 With good reason, we have opposed for the first time
6 in this case the relief that they've requested, because
7 currently they're asking for approval of a disclosure statement
8 to be sent to creditors soliciting their vote with, as the
9 Court just pointed out, no explanation of the value of the
10 claims being dismissed, released, no explanation of any
11 investigation that they may have done.

12 And because we raised that, we felt compelled, if the
13 Court was going to go forward and approve this, that we needed
14 to be able to voice our opposition in a submission to the
15 creditors.

16 And the reply we got today I think is unfair and
17 inappropriate and it's offensive, because it takes -- it
18 questions the integrity of the hardworking Committee members
19 and said that their opposition should be in some way not
20 considered by the Court, or taken with a grain of salt. And I
21 just think it's --

22 THE COURT: I considered it, so --

23 MR. GIBBS: I'm sorry?

24 THE COURT: I said I considered it. I think you can
25 tell I considered what you wrote.



1 Unless I hear an objection or someone else that wants
2 to raise something -- I guess I should ask the U.S. Trustee
3 whether you have a problem with narrow exculpation in
4 accordance with Highland Capital, but including, like we did
5 yesterday from Talen, the 1125(e) language verbatim; and that
6 could extend broadly, to the extent people act in good faith
7 and we'll have to have that proof, but it won't be an
8 exculpation. It will be an 1125(e) order.

9 MR. RUFF: Your Honor, I don't have authority to do
10 exactly what we did in Talen. That was the facts and
11 circumstances of that case. But I think something along those
12 lines. And to be clear, we did provide comments to -- with
13 solicitation in mind only. We still reserve all rights to
14 actually make further comments and objections to the plan
15 itself.

16 THE COURT: I know, and sort of everyone does, which
17 is why I like --

18 MR. RUFF: Yeah.

19 THE COURT: -- getting these sort of cleared up, up
20 front, because I really don't want to be at a confirmation
21 hearing where I have to deny confirmation because there was
22 something material missing.

23 MR. RUFF: Your Honor, we'd be more than happy to
24 work with them, as well, on the language. If we can get
25 agreement on the language, and similar along the lines what was



1 done in Talen, then that would go a long ways.

2 THE COURT: Okay. I'm not saying we always need to
3 do Talen every time --

4 MR. RUFF: Right.

5 THE COURT: -- but it seems to me that when I have a
6 debtor that wants broad exculpation, I don't think I can do
7 that. But using 1125(e), which was not my idea, right, it was
8 somebody else's idea yesterday, of using that with a gatekeeper
9 function protects people that have acted in good faith but may
10 be in a slightly narrower range than a full exculpation. But
11 the Fifth Circuit has never given any indication that -- and
12 nor would they, that 1125(e) doesn't apply in bankruptcy cases.

13 MR. RUFF: We have, of course, no issue parroting the
14 code --

15 THE COURT: That's all I'm talking about, yeah.

16 MR. RUFF: -- into any sort of solution. And just
17 with respect to the exculpation, I do feel like we're sort of
18 treading a little bit of new ground here in light of the
19 Highland decision, so --

20 THE COURT: I think we are. I think we are. I was
21 just so pleased that somebody came up with the idea yesterday.
22 And I guess I pushed it, but it wasn't my idea, right?

23 MR. RUFF: Yeah, it was --

24 THE COURT: It was a good idea.

25 MR. RUFF: Always -- I'm always happy to be around



1 other people who are smarter than myself to come up with such
2 solutions and be creative, Your Honor, so --

3 THE COURT: Well, that's the way I felt about it
4 yesterday, as well.

5 So, Mr. Grogan, you're coming in on the 20th at two
6 o'clock. Should we just continue this to that hearing so
7 you're only coming over once?

8 MR. GROGAN: I think that would be perfect. That
9 will give us a chance. We'll work on additional disclosures
10 and drill down on what we think is actually being released.
11 And which, you know, to -- I just want to prepare everybody.
12 It's not just debtor side employees or directors and officers.
13 We're also, you know, offering to release preference actions
14 against creditors, potential fraudulent transfer, you know.
15 But we'll cover the gamut and --

16 THE COURT: Yeah. We just need to see what it is
17 that's being released, I think.

18 MR. GROGAN: Right.

19 THE COURT: And with respect to the exculpation, if
20 you -- were you actually listening yesterday? Because a lot of
21 this was oral, and I want to go back over it, if I could, just
22 for a minute.

23 MR. GROGAN: That would be wonderful. I actually
24 learned about it through Reorg Research, so I may not have
25 gotten the full picture.



1 THE COURT: Well, they're usually better --

2 MR. GROGAN: But they usually do a pretty good job.

3 THE COURT: -- better at remembering than I am, but
4 here's the deal. I don't think, under Highland Capital, that
5 we can give exculpations broadly across the range of officers
6 and directors and lenders and professionals in a case. I think
7 all that we can give would be limited exculpations, and they
8 defined what those are.

9 But one of the teams yesterday said, well, under
10 1125(e), we are protected, so long as we act in good faith,
11 from things like solicitation of securities and plan formation.
12 And what I said was I don't want to interpret 1125(e) at this
13 point because who knows what the particular matter that will
14 come before us is, and whether it fits under 1125(e) or not.
15 Unless somebody can define one, we aren't going to know. But I
16 don't have any problem literally quoting 1125(e) and saying
17 that applies broadly across a broad range of people, because
18 that's what the code itself says. So we incorporate that into
19 the plan and the confirmation order.

20 And it took -- it may have been their idea, but it
21 then took some cajoling by me to get them to do it. But in the
22 end, they did do it and adopted their own idea. And it seems
23 to me the right way to go. It's consistent with Fifth Circuit
24 law and also protects people that are acting in good faith in
25 the manner that Congress dictated. And I think, so long as we



1 use the precise language from 1125(e), that should not draw any
2 real problem.

3 MR. GROGAN: Right.

4 THE COURT: And the U.S. Trustee -- and I
5 complimented them for this yesterday -- didn't object. They
6 said no, that seems like a reasonable solution yesterday. And
7 he's right. I mean, every case is different. It certainly may
8 not be a reasonable solution in this case, and I'm not trying
9 to lock him into it here. But the concept was reasonable to
10 them, and they're frankly the ones that would appeal that kind
11 of a thing.

12 So if they think this is legal, the way that I do,
13 given the argument that got made to me, seems to be a good
14 solution that fits squarely within what Highland Capital
15 requires.

16 But the hard part is don't call it part of your
17 exculpation because it isn't.

18 MR. GROGAN: Right.

19 THE COURT: And quote the language precisely. And
20 people just need to live with that. That's what's authorized,
21 and that's the limit I think of Highland Capital. Maybe you
22 can come up with some other provision that none of us have
23 really been thinking about, but it seemed to work pretty well
24 in that case.

25 MR. GROGAN: Yeah. For what it's worth, and we'll



1 spend some time studying the issue and your ruling in Talen,
2 but for what it's worth, I read Highland Capital to permit some
3 exculpation so long as parties are acting in a fiduciary
4 capacity during the case, but it's --

5 THE COURT: It's hard to say whether -- is anyone
6 acting in a fiduciary capacity or only a narrow range of people
7 acting in a fiduciary capacity. And I don't think we need to
8 cross that bridge.

9 MR. GROGAN: Yeah. Okay.

10 THE COURT: So the audio of the hearing is already up
11 on the Talen docket sheet, if you want to download it and
12 listen to it.

13 MR. GROGAN: Okay. Thank you, Your Honor.

14 THE COURT: And you know, my experience -- I don't
15 subscribe to Reorg Research, but usually they do get things
16 right, so my guess is that you probably already read more than
17 I've told you.

18 Okay. Anything else that we can do today? Anyone on
19 the phone have any problems with this?

20 (No audible response)

21 THE COURT: Okay. We're going to go ahead and recess
22 until two o'clock. A revised disclosure statement will be
23 filed not later than five o'clock p.m. on the 19th. Is that
24 fair?

25 MR. GROGAN: Is that Monday?



1 THE COURT: That's Monday.

2 MR. GROGAN: We can hit that.

3 THE COURT: Yeah. Five o'clock on the 19th.

4 Mr. Gibbs has to stay awake all night to read for the afternoon
5 on the 20th.

6 MR. GIBBS: Eleven nights in a row.

7 THE COURT: All right. Thank you all. We'll recess
8 until two o'clock.

9 MR. GROGAN: Thank you, Your Honor.

10 MR. GIBBS: Thank you, Your Honor.

11 THE COURT: Thank you.

12 (Proceedings concluded at 1:53 p.m.)

13 * * * * *

14

15 C E R T I F I C A T I O N

16

17 I, Michelle Costantino, court-approved transcriber,
18 hereby certify that the foregoing is a correct transcript from
19 the electronic sound recording provided for transcription and
20 prepared to the best of my ability.

21

22 *Michelle Costantino*

23 _____

DATE: January 18, 2023

24 MICHELLE COSTANTINO, AAERT NO. 589

25 ACCESS TRANSCRIPTS, LLC

